

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND :
 TELRIC COST STUDIES : DOCKET NO. 2681
 FILED MAY 1, 2002 :

REPORT AND ORDER

On November 18, 2001, the Public Utilities Commission (“Commission”) issued Order No. 16793, which, in part, required Verizon-Rhode Island (“VZ-RI”) to file updated TELRIC cost studies no later than May 1, 2002. On May 1, 2002, Verizon-Rhode Island (“VZ-RI”) filed updated TELRIC cost studies, which included a “base scenario” and a “standard scenario.” The standard scenario reflected VZ-RI’s proposed alternative costing methods and input assumptions that it believed were “more appropriate” for deriving the costs of UNEs in Rhode Island. According to VZ-RI, the base scenario reflected all of the Commission’s directives in Order No. 16793.¹

On June 12, 2002, the Division of Public Utilities and Carriers (“Division”) filed a motion to strike or exclude VZ-RI’s base scenario and compel VZ-RI to re-file the base scenario in accordance with Order No. 16793. In support of its motion, the Division noted that in its updated TELRIC cost studies, VZ-RI utilized a new Loop Cost Analysis Model (“LCAM”) for determining loop costs and a new 2002 NRC Model for determining non-recurring charges. The Division contended that these

¹ VZ-RI’s cover letter dated May 1, 2002.

new cost models utilized cost study methods that, by VZ-RI's own admission, "differ from the methods that formed the bases for the Commission's findings and conclusions described in Order No.16793." In Order No. 16793, the Commission specifically required VZ-RI to file "fresh cost studies using the VZ-RI recurring and non-recurring cost models, as adjusted in accordance with the parameters and other applicable directives set for in this Order." According to the Division, Order No. 16793 required VZ-RI's new cost studies to utilize the same cost study methods utilized in the original cost studies upon which the Commission's findings and conclusions in that Order were based. Specifically, VZ-RI had previously utilized a proprietary MS Excel spreadsheet workbook known as "LINKCSTR" for the loop recurring cost model, and a proprietary MS Excel Spreadsheet workbook known as the "1997 NRC Model" for the non-recurring cost model.² Accordingly, the Division urged the Commission to reject VZ-RI's current base scenario and require VZ-RI to re-file its base scenario cost studies utilizing LINKCSTR and the 1997 NRC Model to compute costs or, in the alternative, to permit the use of VZ-RI's base scenario and strike VZ-RI's standard scenario.³

On June 19, 2002, VZ-RI filed its opposition to the Division's motion. VZ-RI argued that the Division's concern over the spreadsheets used for LINKCSTR and the 1997 NRC Model elevated form over

² Division's memorandum dated June 12, 2002, pp. 2-3.

substance. VZ-RI contended that the Commission's prior Order did not focus on the format of the cost studies but rather on the substance of the assumptions and inputs that went into cost studies. VZ-RI suggested that the use of LINKCSTR and the 1997 NRC Model would take months to complete and the analysis would be the product of outdated spreadsheet tools.⁴

VZ-RI argued that LINKCSTR and the 1997 NRC Model are merely a means for computing values from numerous inputs and do not constitute the cost study methodology. VZ-RI stated that it used the cost study approaches required in the Commission's prior Order but merely altered the computer tools used for the cost studies. In addition, VZ-RI indicated that LCAM, which replaced LINKCSTR, provides a level of detail that was not available in the 1997 cost studies and, therefore, is more accurate.⁵ VZ-RI noted that it has used the newer spreadsheet tools in updated cost studies filed in Massachusetts, Pennsylvania, and Maryland. According to VZ-RI, the non-recurring cost portion of the base scenario reflects the same basic approach approved by the Commission in its prior Order. Lastly, VZ-RI opposed the Division's suggestion of striking VZ-RI's standard scenario because the Commission's prior Order

³ Id., p. 6.

⁴ VZ-RI's memorandum dated June 19, 2002, pp. 1-2.

⁵ Id., pp. 5-7.

allowed the parties, including VZ-RI, to present alternative cost proposals.⁶

Other parties submitted written comments on June 19, 2002. WorldCom concurred with the Division's motion, indicating that the Division presented a compelling argument, based on the language of Order No. 16793 itself, that the Commission expected to have its modifications applied to the cost models litigated and reviewed by it in that proceeding. In addition, WorldCom pointed out that VZ-RI's base scenario cost studies produced a higher statewide average loop rate for Rhode Island than currently in effect.⁷

Conversent Communications concurred with the Division's motion to strike VZ-RI's base scenario and order VZ-RI to re-file it utilizing the same LINKCSTR and the 1997 NRC spreadsheet analysis to compute costs upon which the Commission's Order No. 16793 was based. In addition, Conversent moved to strike portions of VZ-RI's standard scenario in order to avoid re-litigation of issues and in order to narrow the issues. Conversent pointed to the following portions of VZ-RI's standard scenario as being inconsistent with the Commission's prior Order: investments in loop architecture and the use of GR-303, fill factors, depreciation rates, cost of capital, and administrative, overhead and support costs.⁸

⁶ Id., pp. 9, 11.

⁷ WorldCom's letter dated June 19, 2002.

⁸ Conversent Communication's memorandum dated June 19, 2002, pp. 5, 16.

On June 21, 2002, VZ-RI replied to the comments of WorldCom and Conversent Communications. VZ-RI argued that the Commission should not strike any portion of the standard scenario because it would deprive VZ-RI of its due process rights and preclude consideration of VZ-RI's alternative cost proposals. VZ-RI characterized Conversent's motion to strike the standard scenario as essentially a motion for summary judgment, which is not appropriate because Order No. 16793 permits VZ-RI to submit alternative cost proposals and, according to VZ-RI, it has presented expert evidence, Rhode Island specific evidence or new evidence to justify its positions on fill factors, depreciation inputs, cost of capital and administrative costs.⁹ In addition, VZ-RI argued that Conversent and WorldCom's comments suggest their objectives were to achieve lower UNE rates rather than TELRIC-compliant UNE rates.¹⁰ VZ-RI also contended that, contrary to Conversent's argument, Order No. 16793 does not require VZ-RI to assume the use of 100% GR-303 technology in its new cost studies. In conclusion, VZ-RI asked the Commission to deny Conversent's motion.¹¹

After due notice, a public hearing was conducted at the offices of the Commission, 89 Jefferson Boulevard, Warwick, on August 6, 2002. The following appearances were entered:

FOR VZ-RI:

Keefe Clemons, Esq.

⁹ VZ-RI's memorandum dated June 21, 2002, p. 2.

¹⁰ Id., pp. 2-3.

¹¹ Id., pp. 3, 5-8.

FOR DIVISION: Leo Wold, Esq.
Special Assistant Attorney General

FOR ATTORNEY GENERAL: Paul Roberti, Esq.
Assistant Attorney General

FOR CONVERSENT: Scott Sawyer, Esq.

FOR WORLDCOM: Chris McDonald, Esq.

FOR COMMISSON: Steven Frias, Esq.
Executive Counsel

At the hearing, the Division's consultant, Mr. Thomas Weiss, testified on behalf of the Division. Mr. Weiss stated that it was important for VZ-RI to use the same cost models and methodologies used in the 1997 cost studies in order to establish a reasonable nexus between the first phase of TELRIC and the current phase, and to see how costs have changed from VZ-RI's perspective.¹² Mr. Weiss stated that VZ-RI has the burden of complying with the Commission's orders and that he was perplexed that VZ-RI did not seek permission to use updated cost models for the next phase of TELRIC prior to the May 1, 2002 filing deadline.¹³ Mr. Weiss stated that since VZ-RI's updated cost models have substantially different methodologies from those used in the 1997 cost studies, he could not determine at this juncture whether VZ-RI's updated cost models would produce TELRIC-compliant rates.¹⁴ However, he also indicated that the re-filing was not necessary to determine whether VZ-

¹² Tr. 8/6/02, p. 29.

¹³ Id., p. 32.

¹⁴ Id., pp. 52-53.

RI's updated cost models will produce TELRIC-compliant rates.¹⁵ Based upon Mr. Weiss' testimony, counsel for the Division contended that Order No. 16793 required VZ-RI to use LINKCSTR and the 1997 NRC Model in its present filing.¹⁶

Mr. Michael Anglin testified on behalf of VZ-RI. He noted that VZ-RI has filed cost studies throughout its service territory utilizing the updated methodologies presently before the Commission. He specifically cited Pennsylvania and Massachusetts filings as examples.¹⁷ Mr. Anglin stated that he believed VZ-RI was in full compliance with Order No. 16793. He referred to LINKCSTR as a costing tool instead of a model.¹⁸ Mr. Anglin cited GR-303 as an example of how VZ-RI could not comply with Order No. 16793 if it used 1997 spreadsheets.¹⁹ Mr. Anglin stated that he interpreted the words "cost model" in Order No. 16793 to mean a TELRIC "approach," and not a specific cost methodology.²⁰ However, under cross-examination, Mr. Anglin admitted that in its pre-filed testimony, VZ-RI stated that the "2002 NRC model contains a completely new modeling process."²¹

At the conclusion of the hearing, Mr. Weiss again took the witness stand. Under cross-examination, he stated he had no knowledge of VZ-RI's resources or of the amount of time VZ-RI would need to re-file its

¹⁵ Id., pp. 96-97.

¹⁶ Id., p. 7.

¹⁷ Id., pp. 69, 75, 108.

¹⁸ Id., pp. 109-110.

¹⁹ Id., pp. 142-143.

²⁰ Id., pp. 156-158.

cost studies utilizing LINKCSTR and the 1997 NRC Model. Also, Mr. Weiss indicated that with VZ-RI's cooperation and his knowledge and access to LINKCSTR, he could run LINKCSTR with updated figures.²²

COMMISSION FINDINGS

At the conclusion of the hearing, the Commission proceeded to discuss the evidence and arguments presented and render a bench decision on the Division's Motion. The issue before the Commission was whether VZ-RI's cost studies filed on May 1, 2002 are in compliance with Commission Order No. 16793. The burden of proof is on VZ-RI to demonstrate that it is in compliance with Order No. 16793. VZ-RI did not meet its burden.

In Order No. 16793, the Commission required VZ-RI to file "fresh cost studies using the Verizon recurring and non-recurring cost models, as adjusted in accordance with the parameters and other applicable directives set for in this Order".²³ The Division contends that the 2002 cost studies are not compliant with the Order because do not incorporate LINKCSTR or the 1997 NRC Model upon which the Commission's findings and conclusions in that Order were based. At the hearing, VZ-RI referred to LINKCSTR and 1997 NRC models as costing "tools". However, in pre-filed testimony in support of its new cost studies, VZ-RI acknowledged that the 2002 NRC model is a completely new model, and

²¹ Id., p. 178.

²² Id., pp. 243-244, 248-249.

²³ Order No. 16793 (issued 11/18/01), p. 74.

admitted that the 2002 cost models utilize cost study methods that differ from those that formed the bases for the Commission's findings and conclusions in Order No. 16793.

We agree with the Division that in Order No. 16793, the Commission intended and directed VZ-RI to file new cost studies utilizing the same 1997 cost models that formed the bases for the Commission's findings and conclusions in that Order. In Order No. 16793, the Commission specifically found that the 1997 cost models, with the incorporation of appropriate input variables, will produce TELRIC-compliant UNE rates. Therefore, a reasonable interpretation of Order No. 16793 is that VZ-RI is required to file fresh cost studies using the 1997 cost models which this Commission has already found to be TELRIC-compliant. If VZ-RI had a differing interpretation of Order No. 16793, VZ-RI could have easily filed with the Commission a motion for clarification or relief. VZ-RI's failure to file such a motion is the root cause for the unnecessary confusion and delay in this proceeding.

VZ-RI suggests that we approve the use of the updated models incorporated in the 2002 cost studies because the update models have been adopted by other state commissions. However, this Commission is the authority for determining TELRIC-compliant UNE rates for Rhode Island. In our prior Order, we specifically found that the 1997 cost models produced TELRIC-compliant UNE rates for Rhode Island. It is reasonable to presume that, with the updated inputs specified in Order

No. 16793, the 1997 models will do so again. The same cannot be assumed with respect to VZ-RI's new 2002 cost studies for Rhode Island, however, as the issue of their TELRIC-compliance has not even been litigated in this state yet.²⁴

Requiring VZ-RI to file updated cost studies utilizing the 1997 models does not demonstrate an aversion to new technologies or updated cost tools. Rather, the Commission is persuaded by the Division's testimony that it is important for VZ-RI to use the same cost models and methodologies used in the 1997 cost studies in order to establish a reasonable nexus between the first phase of TELRIC and the current phase, and to see how costs have changed from VZ-RI's perspective.

²⁴ The issue presented to the Commission by the Division's Motion was whether VZ-RI's cost studies filed on May 1, 2002 complied with the Commission's directives in Order No. 16793. The Division persuasively argued that the new cost-studies were not compliant with that Order, and that VZ-RI should be required to re-file its updated cost studies in compliance with that Order so that the Commission would have a consistent basis for evaluating the updated cost studies. Since this was the purpose of the hearing on the Division's Motion, the issues of whether VZ-RI's new 2002 cost studies for Rhode Island are, as an entirely separate and distinct legal and factual matter, in compliance with TELRIC, or whether the new cost studies would, in fact, produce TELRIC-compliant UNE rates for Rhode Island, were not fully explored at the hearing. Indeed, the Division's expert, Mr. Weiss, specifically testified at the hearing that, because VZ-RI's 2002 cost models use substantially different methodologies from those used in the 1997 cost studies, *he could not determine at this juncture whether VZ-RI's updated cost models would produce TELRIC-compliant rates*. Even VZ-RI has acknowledged that its updated cost study methods differ from the ones used in its 1997 cost studies. Consequently, it is not appropriate, and would arguably be premature, for the Commission at this juncture -- *without a complete evidentiary record before it* -- to make any other findings with regard to the "TELRIC-compliance" of VZ-RI's 2002 cost studies for Rhode Island or the new, significantly higher Rhode Island-specific UNE rates produced thereby. As matter of fundamental due process and fairness to the parties in this phase of the TELRIC proceedings, the determination of whether VZ-RI's new cost studies for Rhode Island are TELRIC-compliant, and whether the Rhode Island UNE rates produced by the new cost studies are TELRIC-compliant, should only be made by the Commission *after* the parties have had an opportunity to submit evidence and to participate in full, public evidentiary hearings on these issues. Due process requires this regardless of whether the Division's Motion is granted or denied.

Thus, requiring VZ-RI to re-file its cost studies utilizing the 1997 cost models reflects the Commission's desire to review, on a consistent basis, the UNE rates that updated inputs to the 1997 cost models will produce, and to compare those results with the results of VZ-RI's new 2002 cost studies presented to us for review.²⁵

Although the Division indicated that it could probably run VZ-RI's 1997 cost models with updated inputs, the Commission finds that the burden of complying with the Commission's earlier Order is on the utility. VZ-RI certainly has the resources to file the 1997 cost models with updated inputs as directed by the Commission in that Order. Accordingly, the Commission directs VZ-RI to re-file its cost studies incorporating the updated inputs specified in Order No. 16793, utilizing the same LINKCSTR and 1997 NRC Model upon which the Commission's findings and conclusions in that Order were based. In addition, the Commission has decided to stay any further proceedings in this Docket in order to enable VZ-RI to focus on filing its updated cost studies in compliance herewith. Accordingly, any motions to strike VZ-RI's standard scenario or base scenario utilizing the 2002 cost models will be taken up at a later date.

²⁵ It should be noted that, while VZ-RI's 2002 cost studies produce significantly higher UNE rates for Rhode Island than those currently in effect pursuant to Order No. 16793, the parties have not had an opportunity to submit evidence or be heard on the merits of VZ-RI's 2002 cost studies.

During the bench discussion, the Commission requested that the Division provide clarifying language to incorporate into the Commission's order to avoid confusion and give VZ-RI clear direction as to the requirements for the new cost studies. The Division filed its response on September 23, 2002; VZ-RI submitted its comments thereon on October 3, 2002. The Commission hereby adopts the language proposed by the Division in its letter filed on September 23, 2002, as amended on September 25, 2002, which reads as follows:

In Order No. 16793, the Commission required Verizon "...to file...new rates in this proceeding, based on fresh cost studies using the Verizon recurring and nonrecurring cost models, as adjusted in accordance with the parameters and other applicable directives set forth in this Order." The fresh cost studies ordered by the Commission constitute a "base scenario" or "run" of the cost models in which the Commission's findings are incorporated and carried through to all aspects of the model. The Verizon loop recurring cost model upon which the Commission based Order No. 16793 is a proprietary MS Excel spreadsheet workbook known as LINKCSTR (Link Coster). The nonrecurring cost model is another proprietary MS Excel spreadsheet workbook known as the Bell Atlantic NRC "model" (the "1997 NRC Model").

Both the 1997 NRC Model and LINKCSTR involve a number of input variables that, when correctly specified, compute estimates of the nonrecurring costs and the recurring Total Element Long Run Incremental Cost (TELRIC) that Verizon incurs to provide the Unbundled Network Elements ("UNEs") used by Competitive Local Exchange Carriers ("CLECs") to access Verizon's network in Rhode Island.

Inputs to the LINKCSTR model are clearly specified in cells on the MS Excel worksheets that constitute the model. These inputs include, but are not limited to, physical characteristics of loops, limits on loop lengths, installed unit prices of digital loop carrier systems and cables, fill factors, capital costs, etc. Verizon's LINKCSTR model filed in compliance with this order will include all input variables

specified as of the most current date for which such variables can be stated on a temporally consistent basis but not earlier than December 31, 2001. With respect to each input, Verizon will present testimony, exhibits, workpapers, etc. to support its positions (assumptions, values, etc.). For purposes of this LINKCSTR model filing, to be consistent with the assumptions that underpin in its initial LINKCSTR filing in this docket, Verizon is required to assume deployment of GR-303 IDLC.

Like LINKCSTR, inputs to the 1997 NRC Model are clearly specified on the MS Excel worksheets that constitute the model. These inputs include estimates of the time required to perform various specific nonrecurring activities claimed by Verizon to be necessary to install UNEs for use by CLECs, and the probabilities that such activities would be undertaken by Verizon. Verizon's 1997 NRC Model filed in compliance with this order will include all input variables specified as of the most current date for which such variables can be stated on a temporally consistent basis, but not earlier than December 31, 2001. With respect to each input, Verizon will present testimony, exhibits, workpapers, etc. to support its positions (assumptions, values, etc.). For purposes of this 1997 NRC Model filing, Verizon is directed to separate its cost between connection and disconnection activities.

Accordingly, it is

(17395) ORDERED:

1. The Motion of the Division of Public Utilities and Carriers to require Verizon-Rhode Island to re-file its cost studies in compliance with Order No. 16793, utilizing LINKCSTR and the 1997 NRC Model to compute costs, as more fully set forth in this Report and Order, is hereby granted.

2. The proceedings in this Docket are stayed until Verizon-Rhode Island re-files its cost studies in compliance with this Report and Order.
3. Verizon-Rhode Island shall act in accordance with all other findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO A BENCH DECISION ON AUGUST 6, 2002. WRITTEN ORDER ISSUED MARCH 12, 2003.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman*

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

*Chairman Germani's dissenting opinion is attached.

Germani, E, dissenting

The Division's Motion, arguing that VZ-RI did not comply with Commission Order No. 16793 on the basis that the cost studies were not the exact ones approved in that Order, distracts the Commission from the true nature of the TELRIC proceedings, namely, to develop rates that reflect the total element long run incremental cost.²⁶ I believe the Commission's focus in ruling on this motion should have been whether VZ-RI's base scenario based on its 2002 models could produce TELRIC compliant rates. Because I find that the Division did not sustain its burden of proof in showing that VZ-RI's cost studies could not produce TELRIC compliant rates, I dissent from the majority decision.

The Division's Motion and the majority decision puts form over substance. The issue in the instant case should not be whether the updated 2002 methodologies would render the same results as the 1997 methodologies, but whether the 2002 cost studies could yield TELRIC compliant rates. VZ-RI's witness testified that the cost study tools/methodology produce TELRIC compliant rates. And, as the majority decision notes, the Division's own witness indicated that he did not need VZ-RI to re-file its case based on the 1997 cost studies to determine whether the 2002 cost studies based on the updated methodology could produce TELRIC compliant rates. In fact, two other states in the Verizon territory, Pennsylvania and Massachusetts, have

determined that the methodologies incorporated into these 2002 cost studies can produce TELRIC compliant rates. Therefore, rather than putting form over substance in ordering VZ-RI to utilize old methodologies, it is my belief that the Commission should avail itself of the most up to date information and methodologies available to determine the appropriate TELRIC rates.

In my opinion, the majority decision has set the Commission up for another protracted TELRIC proceeding. The first proceeding took approximately four years to complete. While I agree with the majority that the Commission should not approve cost studies simply because other states have found them to be TELRIC compliant, I do not agree that the Commission should have stayed its proceedings. Now, in order to afford VZ-RI due process, the Commission will be in the position of having to determine whether LINKCSTR and the 1997 NRC model or the 2002 methodology produces more accurate TELRIC compliant rates. Then, after making that determination, the Commission would need to make a determination as to the appropriate inputs for the methodology.

Simply put, the delay was not caused by VZ-RI's failure to request clarification of Order No. 16793, but rather by the Commission's decision to put form over substance. The Commission decision provides no

²⁶ As the majority noted, VZ-RI's witness testified that he believed VZ-RI's base scenario filing was in full compliance with Order No. 17743.

further direction to VZ-RI as to how to comply with Order No. 16793.²⁷

Therefore, the majority decision almost guarantees further delays in this important proceeding.

Elia Germani, Chairman

²⁷ It was undisputed that, in some cases, such as GR-303, VZ-RI could not have complied with Commission Order 16793 if it used 1997 spreadsheets (LINKCSTR).